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07 JUL 2006

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In re Application of
OGURA, et al.
Application No.: 10/561,530 (10/472,483)
PCT No.: PCT/JP01/08535
Int. Filing Date: 28 September 2001
Priority Date: 29 March 2001
Atty Docket No.: 241082US2XPCT
For: NEGATIVE RESISTANCE FIELD-EFFECT
ELEMENT

DECISION ON PETITION

UNDER 37 CFR 1.181

This decision is in response to applicant's "Petition Under 37 C.F.R. 1.181 to Grant a Filing Date" filed 14 December 2005 in the United States Patent and Trademark Office (USPTO). No petition fee is required.

BACKGROUND

On 28 September 2001, applicant filed international application PCT/JP01/08535, which claimed a priority date of 29 March 2001. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 10 October 2002. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee in the United States was to expire 30 months from the priority date, 29 September 2003.

On 14 December 2005, applicant filed the present petition indicating that while a U.S. National stage entry had been filed with the USPTO on 29 September 2003 (as evidenced by the postcard returned by the USPTO with a serial number of 10/472,483), applicant was informed during a phone call with the PCT Help Desk that the USPTO had no record of the filing. Applicant's petition was accompanied by copies of the papers allegedly filed 29 September 2003.

DISCUSSION

Applicant has provided a legible copy of the receipt postcard which shows a USPTO date stamp, "Rec'd PCT/PTO 29 SEP 2003" and clearly identifies:

13 pgs. Specification, 3 Claims (English Translation)
Combined Declaration, Petition & Power of Attorney (4 pages)
Application Data Sheet
Notice of Priority

Dep. Acct. Order Form

Credit Card Payment Form for \$900.00

Drawings (3 Sheets)

PCT Transmittal Letter

PCT/IB/304

International Preliminary Examination Report

Information Disclosure Statement

international Search Report

Declaration of Takeyoshi SUGAYA

as well as listing the inventors, international application number and attorney docket number. The evidence is sufficient to establish that the National stage papers were received in the USPTO on 29 September 2003. Applicant has certified that the copies filed with the present petition are true and complete copies of the papers originally filed on 29 September 2003. As such, it is proper to **GRANT** applicant's petition at this time.

As the USPTO has no record of application serial number 10/472,483 the serial number identified above (10/561,530) will be considered the U.S. National stage entry for international application PCT/JP01/08535. The fees paid in application 10/472,483 will be transferred to the serial number 10/561,530 and applicant should continue to use this number in all future correspondence with the USPTO.

Regarding the declaration of inventor Sugaya, MPEP section 605.04 states:

When a typographical or transliteration error in the spelling of an inventor's name is discovered during pendency of an application, a petition is not required, nor is a new oath or declaration under 37 CFR 1.63 needed. However, applicants are strongly encouraged to use an application data sheet such that any patent to issue will reflect the correct spelling of the inventor's name. Without an application data sheet with the corrected spelling, any patent to issue is less likely to reflect the correct spelling since the spelling of the inventor's name is taken from the oath or declaration, or any subsequently filed application data sheet.

Applicant's have advised the Office of the error in the international application, the inventor has confirmed the correct spelling of his name and applicant has provided an application data sheet with the correct spelling of the inventor's name. In addition, the name is correctly spelled on the combined declaration and power of attorney.

An examination of the application file reveals that all of the requirements of 35 U.S.C. 371 for entry into the national stage in the United States were satisfied on 29 September 2003.

CONCLUSION

Applicant's petition under 37 CFR 1.181 is **GRANTED**.

The application will be given an international filing date of 28 September 2001 under 35 U.S.C. 363 and a date of **29 September 2003** under 35 U.S.C. 371(c)(1), (c)(2) and (c)(4).

This application is being returned to the United States Designated/Elected Office (US/DO/EO) for further processing in accordance with this decision, namely 1) the issuance of a "Notification of Acceptance of Application Under 35 U.S.C. 371 and 37 CFR 1.494 or 1.495" (Form PCT/DO/EO/903) indicating a 371 date as detailed above.



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